In the Supreme Court of the United States

OCTOBER TERM, 1943

No. 396

FRED M. VINSON, DIRECTOR OF ECONOMIC STABILIZATION, BY PRENTISS M. BROWN, ADMINISTRATOR, OFFICE OF PRICE ADMINISTRATION, PETITIONER

v.

WASHINGTON GAS LIGHT COMPANY, RESPONDENT

FRED M. VINSON, DIRECTOR OF ECONOMIC STABILIZATION, BY PRENTISS M. BROWN, ADMINISTRATOR, OFFICE OF PRICE ADMINISTRATION, PETITIONER

v.

PUBLIC UTILITIES COMMISSION OF THE DISTRICT OF COLUMBIA, RESPONDENT

PRENTISS M. BROWN, ADMINISTRATOR, OFFICE OF PRICE ADMINISTRATION, PETITIONER

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WASHINGTON GAS LIGHT COMPANY, RESPONDENT

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PUBLIC UTILITIES COMMISSION OF THE DISTRICT OF COLUMBIA, RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

1. In its brief in opposition to certiorari, respondent Public Utilities Commission of the District of Columbia stresses the fact that its notice of hearing called simply for an investigation in conformity with the sliding scale arrangement, and the Commission acknowledges that it "refused to change and enlarge the issues and to broaden the scope of the hearings and ruled that the proceeding would be conducted pursuant to the terms of the order and the notice" (Br. in Opp. 7). Justification for this course is sought to be found in the Public Utilities Act of the District of Columbia, which confers on the Commission the power to adopt procedural rules and regulations (*id.* p. 13). But the statute, which authorizes a sliding scale arrangement, is careful to provide that the basic power of the Commission to determine reasonable rates is not to be fettered by such an arrangement. An arbitrary restriction of the hearing is opposed to, rather than supported by, the relevant provisions in Section 43–317 of the District of Columbia Code (see Pet. App., p. 24):

> * * * The commission shall ascertain, determine, and order such rates, charges, and regulations, and the duration thereof, as may be necessary to give effect to such arrangement [sliding scale], but the right and power to make such other and further changes in rates, charges, and

> regulations as the commission may ascertain and determine to be necessary and reasonable, and the right to alter or amend all orders relative thereto, is reserved and vested in the commission notwithstanding any such arrangement and mutual agreement.

Moreover, the question whether the Act of October 2, 1942, has affected the power of the Commission to limit the scope of its hearing is an issue of substantial public importance, calling for determination by this Court.

2. The brief in opposition of respondent Washington Gas Light Company attempts to minimize the departure of the decision below from that of this Court in *Federal Power Commission* v. *Natural Gas Pipeline Co.*, 315 U. S. 575, on the issue of depreciation expense (Br. in Opp. 14). In the *Pipeline* case the Federal Power Commission had found that, where an undepreciated rate base is adopted as the rate base, "unjust enrichment of the companies at the expense of the consumers is a most likely result" unless the interest rate in computing depreciation expense and the rate of return are the same. (2 F. P. C. Rep. 218, 230).[1]

[1] Recognition of the soundness of this position is contained in the recent Report of the Committee on Depreciation, National Association of Railroad and Utility Commissioners (1943), the summary of which states the following conclusion (p. xix):

"42. The sinking-fund method may sometimes be used in rate making when it is impracticable to determine the accrued

The issue in that case was a substantial one, involving the difference between the Commission's allowance of $1,557,582 for annual amortization and the company's claim of $5,100,732.

In the present case a financial expert on the staff of the Federal Power Commission, called by petitioners as a witness, attempted to explain that the calculation of depreciation expense under the sliding scale arrangement resulted in an overcharge to consumers of over $225,000 annually, so that the profit of the company was higher by that amount than as computed by the Commission (Ex. 8, R. II, 420, lines 4 and 5). The testimony of this witness was stricken on the ground that it was not a calculation made in pursuance of the sliding scale formula (R. I, 163, 165) and his exhibit (No. 8) was excluded for the same reason (R. II, 401).[2]

Even if the company had been correct in its assertion that under the *Pipeline* case a regulatory agency might authorize a mode of computing depreciation expense which, again to quote the Pow-

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depreciation. When the sinking-fund method is used in rate proceedings, the interest rate employed should be the same as the rate of return which is applied to the *undepreciated* rate base." [Emphasis supplied.]

[2] Later the Commission acceded to the suggestion of counsel for respondents that, without waiving any of their objections to the exhibit, it should be admitted "for whatever weight it may have" (R. II, 403, 404; see R. II, 420). The Commission, however, ignored the issue of depreciation in its order fixing rates.

er Commission, would have as its "most likely result" the "unjust enrichment" of the company "at the expense of the consumers," the question would remain whether a regulatory body which had indulged in this liberty might nevertheless find the company entitled to a wartime rate increase without having recognized in so doing the fact that the method employed in computing depreciation expense had afforded profits to the company over and above the net return otherwise computed by the Commission.

3. Other contentions made by respondent Washington Gas Light Company serve to confirm the fact that the Commission, by its restriction of the scope of the hearing, was deprived of significant data essential to a determination of rates which would be just and reasonable and in conformity with the principles of the stabilization legislation. Thus, for example, it is contended (Br. in Opp. 13) that the Commission knew the actual cost of money to the company to be slightly more than 6½ percent. That question, however, did not enter into the proceedings; there were no findings by the Commission on the point; no testimony was presented thereon; and petitioners, if given an opportunity, would dispute the statement. Also, it is argued that the Commission allowed 5.57 percent as a rate of return for the ensuing year (Br. in Opp. 13). But, aside from the fact that this is computed upon a substantially

undepreciated rate base, it gave no consideration to the prospect of improvement in the company's business for the following year. To give consideration to a company's operating prospects should be prerequisite to the approval of any wartime rate increase, and the Commission's refusal to do so is inconsistent with its assertion of the company's necessity as a basis for the increase allowed.

Respectfully submitted.

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